

SDS LUMBER COMPANY,)	AGBCA No. 97-163-1
)	
Appellant)	
)	
Representing the Appellant:)	
)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

December 16, 1998

OPINION BY ADMINISTRATIVE JUDGE HOWARD A. POLLACK

This appeal arises out of the Blimp Timber Sale, Contract No. 074378, between the United States Department of Agriculture, Forest Service (FS), Mt. Adams Ranger District, Gifford Pinchot National Forest, and SDS Lumber Company (SDS or Appellant) of Bingen, Washington. SDS claimed entitlement for costs associated with curtailment of its operations by the FS, which the FS contended it properly exercised under the clause dealing with protection of habitat and endangered species. In exercising the curtailment, the FS placed a limited operating season on certain segments of the sale. Appellant claimed \$55,400.72.

The Board has jurisdiction over the appeal pursuant to the Contract Disputes Act, as amended, 41 U.S.C. §§ 601-613.

By letter of May 7, 1997, Appellant appealed to the Board from a Contracting Officer's decision of March 4, 1997, denying its claim in full. In its notice of appeal, the Appellant sought \$47,583.22. After the parties completed filing pleadings, Appellant filed, on August 18, 1997, a Motion for Summary Judgment asserting that the appeal solely involved matters of contract interpretation and

that development of specific facts was not necessary in order to decide the case. The FS contested the Motion.

On March 19, 1998, the Board denied Appellant's Motion, AGBCA No. 97-163-1, 98-1 BCA ¶ 29,643. In that decision the Board pointed out there were a number of material factual disputes that affected a final disposition, and further that certain language relied upon by Appellant was not entirely clear and needed amplification before the Board could accept Appellant's interpretation.

Soon thereafter, the Board scheduled a telephone conference to schedule a hearing. At that time, the Board was advised that the parties were engaging in settlement discussions. Accordingly, the Board delayed scheduling a hearing so as to give the parties an opportunity to resolve the matter on their own.

On July 15, 1998, counsel for Appellant submitted Appellant's Unopposed Motion to Dismiss With Prejudice, which advised the Board that the parties had resolved the appeal by agreement.

DECISION

Pursuant to the Motion, the appeal is dismissed as settled.

HOWARD A. POLLACK

Administrative Judge

Concurring:

EDWARD HOURY

Administrative Judge

JOSEPH A. VERGILIO

Administrative Judge

Issued at Washington, D. C.

December 16, 1998